

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MC ALLEN DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 7:14-CV-00942
)	
Plaintiff,)	CIVIL
)	
vs.)	McAllen, Texas
)	
ALL FUNDS ON DEPOSIT)	Friday, March 11, 2016
AT SUN SECURED ADVANTAGE,)	
ACCOUNT NO. *3748, ET AL.,)	(9:51 a.m. to 10:08 a.m.)
)	
Defendants.)	

HEARING

BEFORE THE HONORABLE RANDY CRANE,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For United States:	MARY ELLEN SMYTH, ESQ. Office of the U.S. Attorney 1100 Matamoros, 2nd Floor Laredo, TX 78040
For Defendants:	BENIGNO TREY MARTINEZ, III, ESQ. Martinez Barrera Martinez 1201 E. Van Buren St. Brownsville, TX 78520
Court Recorder:	Rick Rodriguez
Transcribed By:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, Texas 78480-8668 361 949-2988

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transcript produced by transcription service.

1 McAllen, Texas; Friday, March 11, 2016; 9:51 a.m.

2 (Call to Order)

3 **THE COURT:** All right. So next is -- let's move on
4 to 14-CV-942: *United States versus All Funds on Deposit at Sun*
5 *Secured Advantage, et al.*

6 If I can get announcements for who is here.

7 **MS. SMYTH:** Mary Ellen Smyth for the government, your
8 Honor, and Mr. Salazar is also present for the government.

9 **MR. MARTINEZ:** Your Honor, Trey Martinez and Bobby
10 Joe Yzaguirre (phonetic) on behalf of the claimants.

11 **THE COURT:** All right. So you filed a motion for
12 reconsideration and sort of putting some things in the record.
13 I assume that's just to I guess help the case if I rule against
14 you, help with the appeal, but again I read everything that you
15 filed and I'm still convinced that his failure to show up
16 across the hallway to answer to his indictment that he's a
17 fugitive disentitles him to make the claim here and I guess it
18 doesn't really matter that he's not being prosecuted in Mexico.
19 It wouldn't really matter again from the case I read that he
20 was prosecuted and exonerated in Mexico. That wouldn't really
21 matter either. I know you put a lot of stuff in the record
22 about his innocence but he has that opportunity to fight that
23 here across the hall.

24 **MR. MARTINEZ:** And Judge, just for purposes of the
25 record and for the Court, you know, I just want to make sure

1 that the Court is kind of aware of the timeline of this case.
2 This case got filed in November of 2014. We all agreed to stay
3 this to see if there's something that we could try and work
4 out.

5 **THE COURT:** Work out, sure.

6 **MR. MARTINEZ:** And then when we couldn't do that we
7 moved forward. We sent out discovery. Maybe five days before
8 discovery was due Ms. Smyth called me and she asked for an
9 extension of two weeks. Okay, and I agreed to give it to her
10 as we normally would and then within those two weeks I get a
11 motion to disentitle my client under the Fugitive
12 Disentitlement Act without any discovery, and so I have a -- my
13 biggest issue is we have not one piece of evidence, not one
14 piece of evidence, in regards to either the civil claim, the
15 criminal claim, anything. Okay, and we have moved forward in
16 the civil claim, and so my biggest issue here is we were about
17 to get some evidence and then all of a sudden we said, "No. We
18 agreed to a two week extension," and then all of a sudden in
19 that two weeks I get this motion and then the next thing you
20 know I'm sitting back, I have no discovery and so I then said
21 to my client, okay, and I can understand it. You get indicted
22 over here for something that you don't think you did -- I mean
23 if I got indicted in Mexico for something supposedly I did over
24 here, I'm not sure I'm going to show up in Mexico either.
25 Okay.

1 **THE COURT:** I mean I understand the situation.

2 **MR. MARTINEZ:** But I am going to want to see what
3 evidence they have and so when I sit back and I told my client,
4 "Give me some evidence so at least I can show the Court that
5 conclusively there's nothing -- there's" -- I can't go prove a
6 negative other than there's no investigation. There's no
7 criminal indictment. There's no conviction. Everything that
8 he did during this term has been approved by the Mexican
9 government and so we put that before the Court and for the
10 record. Okay, and I still don't have one piece of evidence
11 from the government and that's why I'm asking this Court -- I
12 understand the Court's ruling if in fact he's a fugitive with
13 evidence and something there but maybe the Court could
14 consider, "Listen, let me hold off on this ruling until some
15 discovery has been done," because I still have yet to have
16 anything from them.

17 **THE COURT:** You're not getting stuff in the criminal
18 case? They don't open --

19 **MR. MARTINEZ:** Nothing.

20 **THE COURT:** -- their file? The U.S. attorney doesn't
21 open their file to you?

22 **MR. MARTINEZ:** I've had not one piece of evidence and
23 it's been almost two years and I've asked for it, witnesses,
24 I've asked for everything.

25 **THE COURT:** Isn't his wife also a claimant here?

1 **MR. MARTINEZ:** She is.

2 **THE COURT:** Well, she's not -- she's not a fugitive
3 is she?

4 **MR. MARTINEZ:** She's not a fugitive but --

5 **THE COURT:** I mean why couldn't she continue to
6 pursue this and get discovery?

7 **MR. MARTINEZ:** And she can and the Court has allowed
8 that and I know the Court has also said, "Listen, even though
9 he's disentitled as a fugitive they're still going to have to
10 come up with something in order to show that his claims
11 basically are unjust and that these are illicit proceeds and
12 there again." So I understand the Court. I'm not going to
13 issue a final judgment until you -- the government shows
14 something. Okay.

15 **THE COURT:** Right.

16 **MR. MARTINEZ:** However, all I'm asking this Court to
17 do is to simply hold off on disentitling him.

18 **THE COURT:** Okay.

19 **MR. MARTINEZ:** Until we get some evidence we can --
20 now if the government comes up with evidence and I can sit back
21 and say, "You know, what, okay, they have something." Well
22 then I see this Court's position saying, "Hey listen, they have
23 something here. Now I'm going to disentitle you." But until I
24 see anything, just anything, let me do a little discovery and
25 then we can address this motion. That's all I'm asking the

1 Court to do.

2 **THE COURT:** Well, I mean I don't have any problem not
3 ruling on your motion to reconsider quite yet because you're
4 going to get discovery anyway because you have the other
5 claimant.

6 **MR. MARTINEZ:** That's all we're asking the Court to
7 do in this case.

8 **THE COURT:** But I still -- I mean here logistically I
9 don't have a problem with that because again another party is
10 going to proceed anyway but I don't technically think that
11 you're necessarily entitled to that.

12 **MS. SMYTH:** And that's --

13 **THE COURT:** I think you'd just get cut off basically.

14 **MS. SMYTH:** And that's the government's position,
15 your Honor. I mean and for no other -- if aside case law and
16 the law aside what's to say that he sees the government's
17 evidence and he says, "Oh, there is no way on God's green earth
18 I'm ever showing back up into the United States because I am
19 for certain going to be convicted." So it's one of those --
20 it's, you know -- and the government's not required to produce
21 any evidence before the Court disentitles somebody from looking
22 or making any kind of determination of the merits of a case and
23 arguably, you know, the complaint alleges that this is
24 sufficient facts for him to go back and do his own research.
25 The majority of the evidence that we -- that we talk about or

1 elude to in addition to his own bank statements is things that
2 were of record or things that occurred in Mexico and which are
3 actually more readily available to him.

4 **THE COURT:** Being over there.

5 **MS. SMYTH:** Not only that, but and again, I don't
6 want to get into the merits of the case because, you know,
7 that's not the whole -- we shouldn't be getting into the merits
8 of the case but from a practical standpoint if he claims that
9 the government's case is weak and if he has a defense to this
10 forfeiture action or the criminal action all the witnesses that
11 could testify on his behalf are in Mexico. They're the people
12 that work for him. They're the people that, you know, entered
13 into these contracts that the government talks about. So those
14 things are available to him and so -- and again, I'm not here
15 to argue the merits of his defense or the merits of the
16 government's case because that's not the point. The whole
17 premise of the fugitive disentitlement doctrine is to prevent
18 somebody from challenging at a -- and that's exactly what he's
19 doing. If the Court will allow some discovery to go forward
20 even as to the wife's claim while he's sitting in Mexico he's
21 again allowing -- he's able to engage in this civil litigation,
22 able to engage in a criminal prosecution, from his safe haven
23 in Mexico which is exactly the purpose of the Fugitive
24 Disentitlement Doctrine and why it should apply in this
25 particular case and why it should be granted today.

1 Also, if the Court were to, you know, deny his motion
2 for reconsideration right now, we've also filed a -- and I
3 wanted to talk to the Court a little bit about this, this
4 motion for entry of judgment, final judgment, as to his
5 interests in the money.

6 Mr. Trey [sic], he can go and he can appeal that
7 right now. He can appeal -- he can appeal the Court's order,
8 the final judgment. He could take that up if he really thought
9 that he -- you know, that his client should not be a
10 disentitled fugitive, that all these things should be
11 considered, you know, even pending, you know, during the
12 pendency of the wife's claim. His appeal could be ongoing. We
13 could go forward and proceed with the wife's case against the
14 house and he gets the benefit of both worlds. So there's no
15 reason for the Court.

16 **THE COURT:** Well, twice the work I guess.

17 **MR. MARTINEZ:** Yes.

18 **MS. SMYTH:** Well, I mean that's why we're here.

19 **THE COURT:** Yes, right, but again it's no additional
20 work just to -- for me to hold off on ruling on that. I mean
21 Mr. Martinez can see how the Court's leaning here. My belief
22 is that he's legally not entitled but -- but since there's
23 going to be discovery anyway I can hold off on that ruling and
24 I really don't know why you've sent me notice that you filed a
25 motion to dismiss on one of the counts in the criminal case

1 since there's multiple counts.

2 **MR. MARTINEZ:** There are -- there are multiple
3 counts, Judge, and the motion to dismiss is based upon what
4 we're going to bring up in the criminal law but we --

5 **THE COURT:** Okay.

6 **MR. MARTINEZ:** I was -- I was advised that we need to
7 advise you --

8 **THE COURT:** This court what's going on, sure.

9 **MR. MARTINEZ:** -- the civil judge of the criminal
10 matter even though you're the criminal judge as well. Okay, so
11 that's based upon some advice of appellate counsel.

12 **THE COURT:** Okay, okay.

13 **MR. MARTINEZ:** And it's not anything I'm going to
14 argue right now.

15 **THE COURT:** Uh-huh.

16 **MR. MARTINEZ:** Okay.

17 **THE COURT:** All right.

18 **MR. MARTINEZ:** But that's -- that's simply --

19 **THE COURT:** So why haven't you-all conducted some
20 discovery on the wife's claim?

21 **MS. SMYTH:** Well, because -- because we have a -- we
22 filed a protective order and the Court granted a stay pending
23 -- the last order from the Court where you disentitled Mr.
24 Silva you granted a stay until you ruled on the motion to
25 strike which you did and I guess now we have this pending.

1 **THE COURT:** Yes.

2 **MS. SMYTH:** So I haven't talked to Mr. Salazar yet.
3 We were -- we started the conversation last night about whether
4 we were going to ask again for a continued stay. He's got some
5 new developments in his criminal case that he was advising me
6 of and so we were going to talk about that after the hearing
7 today which again goes back to the Court's original, you know,
8 discovery will be ongoing as to the wife's claim but if we ask
9 for that protective -- or that stay or alternatively a
10 protective order there is going to be -- we have that issue
11 again about is he going to get the discovery that he needs
12 because we've got this other issue about -- about a motion for
13 stay because of the criminal case. So at the end of the day
14 the easiest thing is for Mr. Silva just to show up and --

15 **THE COURT:** Right.

16 **MS. SMYTH:** -- and face the music in the criminal
17 case.

18 **MR. MARTINEZ:** And again, Judge, if -- if I had the
19 Mexican government indicting me for something I did wholly over
20 here, based upon facts wholly over here, based upon stuff that
21 was wholly over here, I'm not sure I'm going to sit back and
22 say, "I'm going to go to Mexico and give myself up based upon
23 all these actions over here."

24 **THE COURT:** Right, right, although -- yes. I mean I
25 think even El Chapo has decided it's better to come here and

1 face the music than in Mexico.

2 All right. So all right. Well, I'm going to hold
3 off a little bit then on entering that order because you're
4 telling me you're going to commence discovery anyway. I don't
5 really know that it matters. I mean how long --

6 **MR. MARTINEZ:** It may not, Judge.

7 **THE COURT:** -- how long do I hold off on entering the
8 order. It's -- I mean --

9 **MS. SMYTH:** Are we -- which order? Are you talking
10 about the final order or --

11 **THE COURT:** My order denying his motion to
12 reconsider.

13 **MS. SMYTH:** Oh.

14 **THE COURT:** I mean I've drafted it so --

15 **MR. MARTINEZ:** Well, it'd be -- it'd be -- right.

16 **THE COURT:** -- but it's going to take me a little
17 while to finish up crossing the t's and dotting the i's anyway
18 but --

19 **MR. SALAZAR:** Judge, if I may, the discovery that
20 he's seeking may not be found going forward on the house and
21 the wife's situation. She is not a criminal defendant and,
22 therefore, the allegations that are in the criminal case are
23 far more expanding. There may be some things that --

24 **THE COURT:** But there's got to be some evidence.

25 **MR. SALAZAR:** Right. There may be some but --

1 **THE COURT:** The proceeds were used to purchase this
2 home.

3 **MR. SALAZAR:** -- the main jest of everything is
4 separate.

5 **THE COURT:** I mean she has a community property
6 interest or some interest in this home.

7 **MR. MARTINEZ:** The home is under her name.

8 **MS. SMYTH:** It's under her name. It was a gift.

9 **MR. MARTINEZ:** Okay, and you're exactly right, Judge.
10 It's all based upon the same facts.

11 **THE COURT:** Sure.

12 **MR. MARTINEZ:** So I need that discovery so I can sit
13 back and again this is what I'm hearing.

14 **THE COURT:** Right.

15 **MR. MARTINEZ:** If they don't have it then let me know
16 they don't have it.

17 **THE COURT:** I assume the prosecutor has a file that
18 you're welcome to go look at.

19 **MR. SALAZAR:** We do, your Honor.

20 **MR. MARTINEZ:** I haven't been able to.

21 **MR. SALAZAR:** But we're not going to open that file
22 to the fugitive.

23 **THE COURT:** To the civil --

24 **MR. SALAZAR:** To a --

25 **THE COURT:** Well, he's represented in that case.

1 **MR. SALAZAR:** Right, Judge.

2 **THE COURT:** Who's his lawyer?

3 **MR. MARTINEZ:** Myself and Mr. Padilla.

4 **THE COURT:** Okay, in the criminal case?

5 **MR. MARTINEZ:** In the criminal and the civil.

6 **THE COURT:** So why as a fugitive you can't go in and
7 look at the evidence against the person?

8 **MS. SMYTH:** Not until they're arrested.

9 **MR. SALAZAR:** Right. Right, Judge.

10 **MS. SMYTH:** Not until they're arrested.

11 **THE COURT:** Huh?

12 **MR. MARTINEZ:** And that's -- when I was practicing in
13 the U.S. attorney's office that was not my position. You know
14 I want to show somebody, "Hey, this is why I'm indicting you.
15 This is why I'm taking away your stuff."

16 **THE COURT:** Yes, but then --

17 **MR. MARTINEZ:** When does the -- when does the burden
18 shift over to the defendant to sit back and say, "Give me all
19 these documents so I can go and show the Court that I'm
20 innocent of all this stuff" when I have not one piece of
21 evidence. That's the issue that I have here.

22 **MR. SALAZAR:** Policies change in the Department of
23 Justice. New U.S. attorneys come into play.

24 **MR. MARTINEZ:** And I agree with that.

25 **MR. SALAZAR:** What I would hate, Judge, is -- and it

1 don't necessarily represent what we would do individually and
2 we're not trying to hide anything from defense counsel but I
3 would hate for us to be here, Judge in a few months and be
4 hearing the same arguments because he didn't get entirely
5 everything that he's trying to get to then go back to Mr. Silva
6 and tell him, "This is what they have against you" and so
7 that's the only reason that I point out that going forward on
8 the wife's civil case and showing the discovery in that case
9 may not be adequate to give him everything that he needs in the
10 civil portion of it and I would hate for us to be back here in
11 a few months, Judge, and have to be relitigating this and
12 making the same arguments.

13 **THE COURT:** What is it you would give the wife?

14 **MR. SALAZAR:** Judge, there were some wire transfers
15 or there were some money transfers that came to her. She came
16 into the United States. She closed on the house and there
17 would be some documents showing that she had no income and that
18 there are immigration documents. There may be some reports as
19 to interviews that agents did with different folks at banks
20 relative to the wife and that house and forgive me if I -- if
21 I'm leaving anything out. The case agent is here but again the
22 schemes that are alleged against Mr. Silva far surpass any of
23 this.

24 **MR. MARTINEZ:** But it would all have to be based upon
25 the same illegal acts, either illegal funds, right? And so if

1 they're using illegal funds, supposedly, allegedly to purchase
2 this house they would have to have the same discovery given to
3 me. That's the thing. They can't sit back and say, "She
4 bought a house. Therefore, I'm going to take it." That's not
5 the way it works here.

6 **THE COURT:** Well, I thought you said it was a gift
7 so.

8 **MR. MARTINEZ:** They still have to prove that it comes
9 from illicit funds.

10 **THE COURT:** Well, not necessarily. I mean if the
11 person that who gifted it to them by default has no claim to it
12 she's not a bona fide purchaser.

13 **MS. SMYTH:** She's not a bona fide purchaser.

14 **MR. MARTINEZ:** Well, he also -- he also has a claim
15 to it as well.

16 **THE COURT:** Right, except he's got to be here to
17 assert that.

18 **MR. MARTINEZ:** I understand that.

19 **THE COURT:** You can't be a fugitive and make a claim
20 to it is what our law says but --

21 **MS. SMYTH:** I will --

22 **THE COURT:** -- I feel like I'm starting to police
23 discovery fights which I don't want to do. I mean again I'm
24 willing to give two months for your --

25 **MR. MARTINEZ:** For my motions.

1 **THE COURT:** Yes, to rule on your motions so that you
2 can -- your -- the wife can do her discovery. She may get
3 nothing is what I'm being told or she's going to get very
4 little but I don't want to be the one who decides what she gets
5 and what she doesn't get. I'm going to give you two months
6 where she can do her discovery and then I'll enter an order and
7 if you feel like they're not giving you what she's owed then,
8 you know, you can file a motion or something but this way it
9 doesn't hurt anybody for me to hold off on ruling on that.

10 **MR. MARTINEZ:** And how --

11 **THE COURT:** And you don't have to appeal it yet.

12 **MR. MARTINEZ:** I'm sorry.

13 **MS. SMYTH:** Well, I haven't talked to Mr. Salazar
14 about this but I have talked about it with some of my
15 colleagues in the forfeiture unit and this house is identified
16 in the criminal indictment. It's noticed for forfeiture in the
17 criminal indictment. There is -- the extradition packet for
18 Mr. Silva is being prepared and it's my inclination quite
19 frankly, your Honor, to nonsuit as to the house. If the Court
20 were to grant the final judgment as to the monies, you know,
21 Mr. Silva is a disentitled fugitive. There was no claim.
22 There are no other parties before this Court. We would be
23 asking for a final judgment. We would nonsuit against the
24 house. That ends anything in this particular case and it can
25 all be litigated in the criminal case once he's brought over

1 and I quite frankly think that is --

2 **THE COURT:** It sounds like a good deal.

3 **MS. SMYTH:** -- and Mr. Salazar may disagree with me
4 -- but I quite frankly think that that would be --

5 **THE COURT:** That sounds like a good deal. Your wife
6 --

7 **MR. SALAZAR:** I agree with you. I agree with you.

8 **MS. SMYTH:** -- that would be the most judicious thing
9 to do in this particular case.

10 **THE COURT:** Sure and efficient. Sounds like a good
11 deal.

12 **MR. MARTINEZ:** Can I talk to my client?

13 **THE COURT:** You going to call him in Mexico?

14 **MR. MARTINEZ:** I've got to call her.

15 **THE COURT:** Oh, the other client.

16 **MR. MARTINEZ:** The other client.

17 **THE COURT:** Sure. Why don't you-all take a moment?

18 **MR. MARTINEZ:** Well, I'm not sure I can contact her
19 right now.

20 **THE COURT:** Okay.

21 **MR. MARTINEZ:** Can I have until Monday or Tuesday.

22 **THE COURT:** Yes.

23 **MR. MARTINEZ:** Actually I'm in -- Tuesday of next
24 week because I'm getting ready for depositions in another case.

25 **THE COURT:** All right. So I'll give you a week to do

1 that.

2 **MR. MARTINEZ:** Thank you, your Honor.

3 **MS. SMYTH:** All right.

4 **MR. MARTINEZ:** And then we'll submit something for
5 the Court.

6 **THE COURT:** Okay.

7 **MR. MARTINEZ:** Okay?

8 **THE COURT:** Okay. I do need to take a brief recess.
9 So we're done with this case?

10 **MS. SMYTH:** Yes, your Honor.

11 **MR. MARTINEZ:** Yes, your Honor, thank you.

12 **MS. SMYTH:** Thank you.

13 **THE COURT:** Okay. The other case may be a while so
14 I'm going to take a brief recess. All right.

15 **COURTROOM DEPUTY:** All rise.

16 **(Proceeding was adjourned at 10:08 a.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written over a horizontal line.

Signed

August 30, 2016

Dated

TONI HUDSON, TRANSCRIBER